THE HON'BLE SRI JUSTICE A.GOPAL REDDY

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WRIT PETITION Nos.4760 and 7316 of 2006

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DATED: 13-04-2006

WP.Nos.4760 and 7316 of 2006

Between:

Mr. S.Rajanna . . .Petitioner

And

The District Collector, Kurnool, and others . . .Respondents

THE HON'BLE SRI JUSTICE A.GOPAL REDDY

WRIT PETITION Nos.4760 and 7316 of 2006

COMMON ORDER:

These two writ petitions can be disposed of by this common order, since the subject matter of challenge in both the writ petitions is one and the same.

On 10-04-2001, the petitioner was appointed as a temporary fair price dealer of shop No.27 of Kondapuram Village, C.Belgal Mandal, Kurnool District, for a period of three months, in place of Sande Madhava Rao and his appointment was extended from time to time.

The fair price shop of Kondapuram Village was bifurcated into two shops vide Collector's proceedings No.CS2/17/2004, dated 22-02-2004, and existing cards were divided at 192 to shop No.1 i.e. the petitioner, and at 191 to shop No.2. The Revenue Divisional Officer in his proceedings, dated 08-03-2004, appointed Sri P.Sankara Manikya Reddy of Kondapuram Village to the newly created shop on temporary basis. Since the said bifurcation was made during General Elections time and Election Notification was already issued, the District Supply Officer, Kurnool, informed the Mandal Revenue Officer, C.Belgal, that the Election Code is in force and no appointments have to be made during the election time. Accordingly, the Mandal Revenue Officer informed the newly appointed 2nd dealer vide Memo No.B/1/2003, dated 11-03-2004, that the action would be taken for allotment of essential commodities after elections are over. The newly appointed fair price shop dealer has not remitted the Demand Draft for lifting the stocks and approached in November, 2005 for release of essential commodities to shop No.2. The Mandal Revenue Officer *vide* his letter, dated 09-12-2005, sought a clarification from the Revenue Divisional Officer. The Revenue Divisional Officer also sought a clarification from the District Collector. While so, the newly appointed fair price shop dealer had filed WP.No.571 of 2006 for release of essential commodities. This Court disposed of the same on 16-02-2006 at the admission stage directing the respondents to take necessary steps expeditiously in terms of the order, dated 08-03-2004, passed by the 2nd respondent, to release essential commodities to the petitioner therein from March, 2006 onwards. Accordingly, essential commodities have been released in his favour.

At that stage, the petitioner herein filed WP.No.4760 of 2006 seeking a direction to the respondents to release essential commodities to distribute the same, till a regular fair price shop dealer is appointed, since he has paid the amount

through demand draft as though for lifting and distributing the essential commodities to the cardholders including the cardholders, who are allotted to the second shop.

The respondents filed counter-affidavit bringing about the facts of bifurcation and filing of earlier writ petition. On an information given to the petitioner to remit a sum of Rs.17,376/- through a demand draft, for the quantity, which he is entitled to after bifurcation, the petitioner remitted the same on 18-03-2006 and got released the essential commodities in his favour as per orders, dated 18-03-2006.

It is further stated that the petitioner was allowed to lift the stocks for all the existing cards up to February, 2006 in the absence of operation of 2nd fair price shop dealer, who was appointed on temporary basis. In paragraph 6 of the counter-affidavit, it is categorically stated that as per the request made by the cardholders of Kondapuram Village, the District Collector, Kurnool, ordered for bifurcation of existing fair price shop into two shops for the convenience of the cardholders, but not intentional. Knowingly that the shop has been bifurcated into two shops and the existing cards were distributed equally for the convenience of the cardholders, the petitioner has chosen to file the writ petition without disclosing as to the bifurcation and therefore, the same cannot be entertained.

In view of the above stand taken by the department and while the said writ petition is pending, the petitioner filed WP.No.7316 of 2006 questioning the appointment of the 4th respondent *vide* proceedings, dated 08-03-2004, and for setting aside the same contending that the bifurcation order itself clearly speaks that on such bifurcation is being done, vacancy is to be notified for appointment of fair price shop dealer. If a notification is issued, the petitioner is a prospective candidate to apply for the said vacancy, since he has completed five years of service in distributing essential commodities. Instead of appointing a fair price shop dealer on permanent basis, appointment of fair price shop dealer temporarily is arbitrary and illegal and the same is liable to be set aside. The appointment made by the 2nd respondent is collusive against the public policy and motivated by pre-arranged scheme to appoint 4th respondent without bifurcation and without issuing any notification inviting applications. Therefore, appointment of 4th respondent is arbitrary and illegal and the same is liable to be set aside.

Learned counsel for the petitioner reiterated the said contentions and contended that

had the shop is notified to be filled up permanently, the petitioner would be a prospective candidate for appointment as a fair price shop dealer and therefore, appointment of 4th respondent on temporary basis is arbitrary, illegal and the same cannot be sustained. He further contended that the fact that the shop was bifurcated in 2004 and the same was not implemented till March, 2006 clearly discloses that there is no need to bifurcate the shops and since all along, the petitioner has been distributing the commodities, the same arrangement can be made until the shop is notified and permanent arrangement is made.

The Supreme Court had an occasion to consider the issue of reduction of cards of a fair price shop dealer in view of establishment of new fair price shop by bifurcating the existing shop and held that bifurcation of a shop to reduce the number of cards per dealer is a policy decision to be taken by the State Government. Such decision does not affect the rights, if any, of the Fair Price Shop Dealers and as such, the High Court was in error to hold that they were to be given any notice prior to the impugned decision of the State Government **(see DISTRICT COLLECTOR v. B.SURESH)**.

In view of above, the submission made by the learned counsel for the petitioner that the respondents are not justified in bifurcating the fair price shop into two shops is rejected. Coming to the next submission that the shops have not been notified as per the bifurcation order, the respondents are under an obligation to notify and fill up the same subject to following the Rule of reservation. Because it is not notified as per the policy decision and as there is a delay for some time, the respondents are justified in appointing the 4th respondent as a temporary dealer as an alternative arrangement. Therefore, both the writ petitions fail and are liable to be dismissed.

Both the writ petitions are accordingly dismissed. However, the respondents are under an obligation to notify the vacancy and fill up the same as per the policy decision and take steps accordingly. Once it is notified, the petitioner had no right to say that he may be allowed to supply essential commodities to the cardholders. There shall be no order as to costs.

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(A.GOPAL REDDY, J)

13th APRIL, 2006.

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